

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

MICHAEL O'CONNOR,	)	
<i>Petitioner,</i>	)	
	)	No. 15 CV 6494
v.	)	
	)	Honorable
	)	Sharon Johnson Coleman
THOMAS DART,	)	
<i>Respondent.</i>	)	

**MOTION TO DISMISS PETITION WITHOUT PREJUDICE**

The Petitioner Michael O'Connor, by his attorney Molly Armour, respectfully requests the Court to dismiss the pending *pro se* request for relief without prejudice.

1. Petitioner, currently detained at Cook County Jail, filed a *pro se* petition for habeas corpus relief on July 24, 2015. Dkt. 1. Counsel was appointed to represent Mr. O'Connor. Mr. O'Connor's original petition asserted a numerous claims of unconstitutional deprivation of his rights.

2. This petition arises from two cases in the Circuit Court of Cook County which alleged cyberstalking in violation of ILCS 5/12-7.5(a)(1) and 720 ILCS 5/12-7.5(a)(2) of the Illinois Criminal Code.<sup>1</sup> Mr. O'Connor pled guilty to both cases on February 13, 2013.

3. On June 24, 2016, the Illinois Appellate Court struck down 720 ILCS 5/12-7.3(a)(1), (2) (Stalking) and 720 ILCS 5/12-7.5(a)(1), (2) (Cyberstalking), pursuant to *United States v. Elonis*, 135 S.Ct. 2001 (2015). *People v. Relford*, 2016 IL App (1st Dist.) 132531. The statutes were found

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<sup>1</sup> 12CR-12678 and 12CR-22315.

facially unconstitutional under the Due Process Clause of the Fourteenth Amendment. *Id.* The State has appealed, and the statute's constitutionality is currently before the Illinois Supreme Court. These provisions are the same provisions to which Mr. O'Connor pled guilty. Mr. O'Connor's state court attorneys filed a 735 ILCS 5/2-1401 motion seeking to vacate these convictions as unconstitutional; it remains pending before the Circuit Court.

4. As to these 2012 cases, a violation of probation was lodged against Mr. O'Connor following a new arrest in 2014. Recently, on May 12, 2017, the Court terminated his probation.

5. While there may be a future need for a petition for habeas corpus, at this time Petitioner will continue to pursue the vindication and exhaustion of his rights in state court. Petitioner seeks the dismissal of his *pro se* filing without prejudice to such time, if necessary, as his claims are ripe.

6. In bringing this motion, counsel has conferred with Valentina O'Connor, guardian for the Petitioner.

WHEREFORE, Petitioner seeks the dismissal of his *pro se* filing without prejudice to any future presentment of potential claims.

Dated: May 15, 2017

Respectfully submitted,

s/ Molly Armour  
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